

Q: When filing a DP-2210/2220, must the same exception be used in all four quarters?

A: No, each quarter stands on its own.

Q: What is a unitary business?

A: A unitary business is defined by RSA 77-A:1 XIV as 'one or more related business organizations engaged in business activity **both within and without this state** among which there exists a unity of ownership, operation, and use or an interdependence in their functions. The Department's administrative rules define each of these terms: Unity of Ownership (Rev 301.33); Unity of Operation (Rev 301.32); Unity of Use (Rev 301.34); Interdependence in their function (Rev 301.18).

Q: How does New Hampshire treat the federal 30% Special Depreciation Business Expense?

A: At this time, the New Hampshire Legislature has not changed the current business tax law to conform with the federal tax law changes. The Internal Revenue Code (IRC) reference remains the Code in effect on December 31, 2000. Therefore, if these changes are used on your 2001- 2003 federal filing, business taxpayers must recalculate their New Hampshire gross business profits. Since, under current New Hampshire law, the 30% special depreciation bonus expense and the additional IRC Section 179 expense is not allowable. Business taxpayers will have to adjust the taxable income reported on their federal return before reporting their gross business profits on their New Hampshire business tax return. The Department's Schedule R is available for this purpose.

Administrative Rules and Laws: Administrative Rules and Laws are available free from our web site at revenue.nh.gov or by visiting any New Hampshire State Depository Library where copies can be made for a fee. Taxpayers can now remit estimates, tax notice payments and return payments on the internet. For More information, please visit our web site. Individuals who need auxiliary aids for effective communication in programs and services of the department are invited to make their needs and preferences known to the NH Department of Revenue Administration.

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Individuals who need auxiliary aids for effective communications in programs and services of the New Hampshire Department of Revenue Administration are invited to make their needs and preferences known. Individuals with hearing or speech impairments may call TDD Access: Relay NH 1-800-735-2964.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF REVENUE ADMINISTRATION**

**FREQUENTLY ASKED QUESTIONS
(FAQ's)
BUSINESS PROFITS TAX
(BPT)
RSA 77-A REV 300**



The New Hampshire Department of Revenue Administration offers this publication of answers to the most frequently asked questions. While we have attempted to identify the most common concerns, this publication does not address every situation, set of facts, or circumstances. Our goal is to develop a tax administration system that is fair and efficient, with taxpayers having the highest degree of confidence in the integrity of the Department.

Should you have questions or wish to request additional educational services or publications for use in state tax instruction, please feel free to send your request in writing to our NH DRA Customer Education Committee, PO Box 457, Concord, NH 03302-0457.

Visit us on the web @:
revenue.nh.gov

Q: What is the Business Profit Tax (BPT)?

A: An 8.5% tax is assessed on income from conducting business activity within the state. For multi-state businesses, income is apportioned, using a weighted sales factor of 2 and the payroll and property factors. Organizations operating a unitary business must use combined reporting in filing their NH return.

Q: Who must file?

A: Any business organization with a taxable presence and with business activity within the state. However, organizations with \$50,000 or less of gross receipts from all their activities are not required to file a return.

Q: What does nexus mean?

A: Whether an entity is required to file business tax returns depends on whether it has nexus with a state. Nexus is defined as some definite link, or minimum connection, between the state and the entity it seeks to tax. Normally, sufficient nexus for income tax purposes (NH Business Profits Tax) is established when an entity owns, leases property or performs services in the state, employs personnel in the state or has capital or property in the state. If you are an out-of-state business that sells or leases tangible personal property in this state, refer to the department's administrative rule, Rev. 304.01 for an illustrative listing of those activities that create nexus.

Q: When is the return due?

A: Corporate and combined returns are due on the 15th day of the 3rd month following the end of the taxable period. Proprietorship, partnership and fiduciary returns are due on the 15th day of the 4th month following the end of the taxable period.

Q: Do I have to make estimated payments?

A: Four estimates are required, paid at 25% each on the 15th day of the 4th, 6th, 9th & 12th month of the taxable period, for any tax liability greater than \$200.

Q: Am I required to pay estimates during my first year?

A: Yes, if the tax liability is greater than \$200, but you would meet an exception for the penalty, RSA 21-J:32, IV(d).

Q: Can the Community Development Finance Authority (CDFA) or Investment Tax Credit credit be taken on the Business Profits Tax & Business Enterprise Tax?

A: Yes, but the same amount can't be used twice.

Q: Who do I contact with questions?

A: Taxpayer Assistance personnel of the Document Processing Division, PO Box 637, Concord, NH 03302-0637, or call (603) 271-2186.

Q: I have a proprietorship, can I split the rental income between my wife and myself?

A: Not unless two separate and distinct proprietorships exist. See the department's administrative rule, Rev. Rule 307.04(e).

Q: Do I have to file a business profits tax return if my installment sale income is less than \$50,000?

A: The filing requirement is determined in the year of the sale for all years irrespective of the years in which income is received. So, if the gross business income is greater than \$50,000 in the year of the sale, regardless of the amount received in subsequent years, you are required to file until all installments are reported. See the department's administrative rule, Rev 302.07(f).

Q: Are Sub-S Corporations treated differently in NH than C Corporations for tax purposes?

A: No, they are treated the same as C Corporations. The flow-through items on Schedule K are incorporated into corporate income when determining taxable income.

Q: Do all Federal Schedules need to be attached to returns?

A: Yes. They must be included with original and amended returns. Proprietorships must include Schedules C, D, E, F, 4797, 6252, if applicable. For more information, see the general instructions in the business tax booklet.

Q: Is the DP-132, Net Operating Loss Deduction Form, required?

A: Yes - for the year the NOL deduction is used. You must show proof of the loss year being claimed.

Q: Can I amend for a NOL and get a refund?

A: No - NOL's must be carriedback only for purposes of determining the carryforward amount.

Q: How is the carryforward computed?

A: Per RSA 77-A:4, XIII, the carryforward amount is computed by first carrying the loss back three years and then offsetting the loss by any profits during those 3 tax periods. (However, no NOL deduction is allowed in those carryback years.) If there is more than one NH nexus member in the combined group, then the carryback loss must be allocated in accordance with the NH administrative rules, Rev. 303.03 (d) or Rev. 303.03 (e).

For example entities with tax year ending on or before 6/30/02 can take a five year carryforward and entities with tax year ending on or after 7/1/02 can take a 10 year carryforward.

If a loss remains after carryback, offset and allocation (if any), then the remaining loss must be apportioned using the apportionment percentage of the loss period.

Q: What are the maximum amounts of carryforward allowed?

A: See Chart below:	
<u>Date</u>	<u>Max</u>
On or before 6/30/2003	\$ 250,000
7/1/2003 - 6/30/2004	\$ 500,000
7/1/2004 - 6/30/2005	\$ 750,000
on or after - 7/1/2005	\$1,000,000

Q: How do I calculate the Net Operating Loss?

A: For purposes of calculating the amount of any net operating loss deduction allowed under RSA 77-A:4, XIII, section 172 of the Internal Revenue Code in effect on December 31, 1996 shall be followed, except that:

(1) Any loss amount shall first be carriedback to those tax years required by the Internal Revenue code without application of the election in section 172(b)(3) and applied to any income in the carryback tax years, before any remaining loss is carriedforward as a net operating loss deduction.

(2) The carryback of losses as provided in (1) above shall result in neither an allowable net operating loss deduction in the carryback years nor a refund of previously paid taxes. Amended return filed for such purposes shall be prohibited.

(3) The business organization's failure to carryback net operating losses and apply them to the income of prior profitable years shall result in the loss being presumed to be fully absorbed in the carryback year(s).